



Award No. 17712

Docket No. TD-17794

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Robert C. McCandless, Referee

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

**NORFOLK AND WESTERN RAILWAY COMPANY
(Lake Region)**

STATEMENT OF CLAIM: Claim of the American Train Dispatchers Association that:

(a) The Norfolk & Western Railway Company (NYC&StL), (hereinafter referred to as "the Carrier"), violated the effective schedule agreement between the parties, Article 1 thereof in particular, when on April 3, 1967, through and including May 14, 1967 it required and permitted those not within the scope of the said agreement to perform work covered thereby.

(b) The Carrier be required to compensate the senior available extra train dispatcher, as specified in paragraph (d), one day's compensation at rate of the trick train dispatcher because of the violation referred to in paragraph (a) hereof.

(c) The Carrier be required to compensate the senior regularly assigned and available train dispatcher, as specified in paragraph (d), one day's compensation at the rest day rate of trick train dispatcher because of the violation referred to in paragraph (a) hereof.

(d) Named claimants referred to in paragraphs (b) and (c) above on specific dates as referred to in paragraph (a) are identified as follows:

Name	Status	Date	Hours Pro-Rata	Claimed Overtime
L. W. Swiger	Extra	April 3	8	
L. W. Swiger	Extra	April 4	8	
L. W. Swiger	Extra	April 7	8	
L. W. Swiger	Extra	April 10	8	
L. W. Swiger	Extra	April 11	8	
L. W. Swiger	Extra	April 12	8	
L. W. Swiger	Extra	April 13	8	
L. W. Swiger	Extra	April 14	8	
L. W. Swiger	Extra	April 15	8	
R. R. Root	Assigned Rest Day	April 17		8
B. R. Root	Assigned Rest Day	April 18		8
B. R. Root	Assigned Rest Day	April 19		8
E. E. Eggleston	Assigned Rest Day	April 20		8
F. B. Cooper, Jr.	Assigned Rest Day	April 21		8

amended, in the same manner and to the same extent as if Norfolk and Western had been a party thereto.

Minster Branch, the territory involved in the instant case, extends southward (west, time table direction) a distance of 9.5 miles from St. Marys to Minster, Ohio. St. Marys is a point on the Frankfort District of the Carrier's Muncie Division. On the dates here involved freight service on the Minster Branch was afforded by a train operated out of Lima, Ohio, a terminal on the Frankfort District approximately 20 miles east of St. Marys. Train movements on the Frankfort District, as well as the Minster Branch are under the jurisdiction of train dispatchers located at Lima, Ohio. Main line movements Lima, Ohio thru St. Marys, to Frankfort, Indiana are governed by centralized traffic control rules. The switch to the Minster Branch at St. Marys is electrically locked, under the control of the dispatcher.

Under time table instructions in effect prior to January 15, 1967 the single train on the Minster Branch was operated westward (south-compass direction) as No. 55 and eastward as No. 56. The time table instructions specifically provided that No. 55 was superior to No. 56 St. Marys to Minster.

Under Time Table #1, placed in effect on January 15, 1967, train operations on the Minster Branch are governed by Special Instructions 2(b) thereof reading:

2(b). OPERATION ON MINSTER BRANCH

The movement of trains on Minster Branch will be governed by Train Register located at St. Marys. The first extra train registering on the Branch has right thereto without protecting. Other trains must protect against trains registered on Branch, except where arrangements are made by conductors, and when such arrangements are made, they must be in writing, and conductor and engineman each be given copy. Where such arrangements are made by telephone, they must be written out and repeated from written copy, and every precaution taken to guard against error or misunderstanding.

With the change in time tables and instructions effective January 15, 1967 no changes whatever were made in the number of telegraphers of dispatchers assigned in or to the territory involved, or in the working days or hours thereof.

Carrier's Exhibits "A" thru "I", incl. reflect the handling given the dispute on the property.

(Exhibits Not Reproduced)

OPINION OF BOARD: Employees have advanced the present claim before this Board in behalf of several specified Claimants for compensation for work alleged to have been done on certain dates over a two and one-half months period by persons other than the Claimant-dispatchers.

Employees contend that under their rather specific Scope Rule the general movement of trains is exclusively reserved for dispatchers; that Carrier by the promulgation of Timetable Rule 3(b) unilaterally removed some of this work from Claimants, doing by indirection that which they were barred from doing under the Agreement; and that those named Claimants should now be compensated for that work done by others not classified as dispatchers.

Carrier counters by asserting that the Scope Rule is general; that the Agreement does not define the responsibilities of the actual work which belong to dispatchers; that Carrier has the right, in lieu of specific prohibitive language in the Agreement, to promulgate rules necessary to effect more efficient operation of their service; and that Employees have not shown that "others" did actually do work reserved for dispatchers.

The facts appear to be these: Prior to the promulgation of Timetable Rule 3(b), special timetable instructions were that westbound train No. 55 was superior to eastbound train No. 56 regardless of whether No. 55 was late or not. There is no showing in the record specifically what the present Claimants did or did not do under those prior instructions. Neither can we assume anything except that those trains moved under rules previously promulgated by the Carrier. However, the record does show that as of January 15, 1967, new instructions were issued, and they were as follows:

"Timetable Rule 3(b). Operation of Minster Branch

The movement of trains on Minster Branch will be governed by Train Register located at St. Marys. The first extra train registering on the Branch has the right thereto without protecting. Other trains must protect against trains registered on Branch, except where arrangements are made by conductors, and when such arrangements are made, they must be in writing, and conductor and engineman each be given copy. Where such arrangements are made by telephone, they must be written out and repeated from written copy and every precaution taken to guard against error or misunderstanding."

In short, Carrier changed its instructions to permit No. 56 to proceed in the event No. 55 was late. It is the above Rule 3(b) which Employees claims violates Article I of the Scope Rule of the Agreement, the pertinent part thereof which is reproduced below:

"(B) Definitions.

**2. Trick Train Dispatchers
Relief Train Dispatchers**

These classes shall include positions in which the duties of incumbents are to be primarily responsible for the movement of trains by train orders, or otherwise; to supervise forces employed in handling train order; to keep necessary records incident thereto; and to perform related work."

Although we agree with Referee McGovern in Award 16556, involving the same parties and the same Agreement, that this Scope Rule is indeed more precise than most, we can distinguish that Award from the claim before us because there Carrier's principal argument was that Employees had failed to prove that the work claimed had been done exclusively by dispatchers over a long period of time. This argument is only peripherally involved here. In the instant claim Employees have fatally failed to allege specifically not only what work Claimants had done with regard to the movement of these two trains under the previous instructions, but they have also failed to show work done by others tantamount to the usurpation of the rights and privileges accruing to dispatchers under the Scope Rule. (See Referee McGovern, Award 15536 and Referee Dorsey, Award 13736.) Employees have also failed in showing that the Agreement precluded Carrier from changing their timetable instructions. (See Award 11239.)

For the above reasons, this claim must be denied.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Agreement was not violated.

A W A R D

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 13th day of February 1970.